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Serial No.: 09/467,169
Group Art Unit No.: 1647

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REMARKS

Claims 36-39 are pending. The specification is amended to provide the complete priority data.

An abstract is attached as requested.

The Examiner is requesting a new declaration. This is not necessary in this instance. This is a divisional application. The declaration and specification that were filed were copies as is the custom for divisionals. Therefore, the declaration cannot be attached to the specification. The original declaration in the parent application was filed properly with the specification, and there is no need for a new declaration to be filed.

I. Rejection under 35 U.S.C. 112

Claims 36-39 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The Examiner states that it would take undue experimentation to practice the claimed invention.

The rejection under 35 U.S.C. 112, first paragraph is respectfully traversed. A dosage range of 0.01ng/kg to about 1 gram/kg with a preferred range of 0.01 ng/kg - 100 micrograms/kg is given in the specification on page 18, line 23. This is a reasonable range for a contemplated pharmaceutical product. Standard procedure for determining dosage range for a pharmaceutical is to span a wide range in the first human trials. In this case, the in vitro bactericidal assays are relatively easy to run with a wide dosage range. As evidenced by the attached article from Blood 96: 294a, 1990, the peak neutrophil counts in normal mice were attained at 100micrograms /kg. The bactericidal assays were easily done with a wide range of doses of compound. Therefore, it does not take an undue amount of experimentation to determine the required dosage range of the compound, and the rejection under 35 U.S.C. 112, should be withdrawn.

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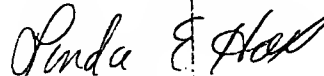
II. Double Patenting Rejection

Claims Claim 36 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 42 of U.S. Patent No. 6,080,398.

A Terminal Disclaimer under 37 C.F.R. § 1.321 (b)(c) will be filed once the claims, other than the double patenting rejection, are in condition for allowance.

Applicant respectfully requests that the Examiner re-examine claims 36-38 and pass the case to allowance, once a Terminal Disclaimer has been sent in. If any questions remain, the Examiner is requested to call applicants' attorney at the number listed below.

Respectfully submitted,



Linda E Hall
Attorney for Applicants
Registration No. 31,763

GLAXOSMITHKLINE
Corporate Intellectual Property - UW2220
P.O. Box 1539
King of Prussia, PA 19406-0939
Phone (610) 270-5016
Facsimile (610) 270-5090

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